

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**SUMMARY**  
**PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING**  
**September 16, 2010**  
**San Diego, California**

**I. PUBLIC MEETING**

**A. CALL TO ORDER AND INTRODUCTIONS**

Chairman MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., September 16, 2010, in Room 310 of the County Administration Center, San Diego, California.

**ATTENDANCE**

**Board Members Present**

Chairman John MacLeod  
Bill Jackson  
Jack Kastorff  
Hank McDermott  
Guy Prescott  
Dave Thomas  
Willie Washington

**Board Members Absent**

**Board Staff**

Marley Hart, Executive Officer  
Mike Manieri, Principal Safety Engineer  
Tom Mitchell, Senior Safety Engineer  
David Beales, Legal Counsel  
Bernie Osburn, Staff Services Analyst  
Chris Witte, Executive Secretary

**Division of Occupational Safety and Health**

Len Welsh, Chief  
Steve Smith, Principal Safety Engineer  
Mike Horowitz, Senior Industrial Hygienist

**Others present**

Dennis Shusterman, CDPH  
Terry Thedell, Sempra Energy Utilities  
Kevin Bland, Granado Bland  
Dan Leacox, Greenberg Traurig  
Julie Broyles, GMA

Carl Casey, ASSE SD  
Bruce Wick, CalPASC  
Joan Gaut, CTA  
John Hallagan, FEMA  
Carol Frehm, HJ McDermott, Inc.

Steve Johnson, ARC-BAC  
Mitch Seaman, CLF

Elizabeth Treanor, PRR  
Marti Fisher Cal Chamber

B.

OPENING COMMENTS

Chair MacLeod indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2

The following people spoke in support of adopting the Diacetyl proposal on the Business Meeting Agenda:

- Dennis Shusterman, California Department of Public Health
- Michael Smith, California Labor Federation

Julianne Broyles, representing the Grocery Manufacturers Association, stated that GMA could support the Diacetyl standard, but only with the following modifications:

- food manufacturers are exempted from the standard;
- the standard cover diacetyl only and not address diacetyl substitutes; and
- that the proposal sunset once a definitive PEL is established.

The following people spoke in support of adoption of the Scaffold Plank Design proposal on the Business Meeting Agenda:

- Kevin Bland, representing the California Framing Contractors Association and the Residential Contractors Association
- Bruce Wick, Risk Management Director for the California Professional Association of Specialty Contractors

Both expressed appreciation for the work of George Hauptman and other Board staff and the efforts made to keep stakeholders involved in the rulemaking process.

C.

ADJOURNMENT

Chair MacLeod adjourned the public meeting at 10:11 a.m.

## **II. PUBLIC HEARING**

### **A. PUBLIC HEARING ITEM**

Chair MacLeod called the Public hearing of the Board to order at 10:11 a.m., September 16, 2010, in Room 310 of the County Administration Center, San Diego, California.

Chair MacLeod opened the Public Hearing and introduced the item noticed for public hearing.

1. **TITLE 8:**     **HIGH-VOLTAGE ELECTRICAL SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 5, Article 17  
Section 2813  
**Underground Vaults—Headroom Clearance**

Mr. Manieri summarized the history and purpose of the proposal, and he indicated that it was ready for the Board's consideration and the public's comment.

Mr. Jackson stated that Section 2813 incorporates by reference Public Utility Code Sections 8051 through 8057, but only Section 8051 is included in the attachment. He asked whether the remaining sections have anything to do with occupational safety and health. Mr. Manieri responded affirmatively, stating that they address requirements for such things as manhole and underground chambers.

Mr. Jackson expressed concern that, as the proposal refers employers out of the regulation to another document, employers may not know where to find the other sections if necessary.

### **B. ADJOURNMENT**

Chair MacLeod adjourned the Public Hearing at 10:17 a.m.

## **III. BUSINESS MEETING**

Chair MacLeod called the Business Meeting of the Board to order at 10:17 a.m., September 16, 2010, in Room 310 of the County Administration Center, San Diego, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8:     **CONSTRUCTION SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 4, Article 12  
Sections 1600-1601  
**Pile Driving and Pile Extraction**  
(Heard at the May 20, 2010, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the package is now ready for the Board's adoption.

MOTION

A motion was made by Mr. Kastorff and seconded by Mr. Jackson that the Board adopt the proposal.

A roll call was taken, and all members voted "aye." The motion passed.

2. TITLE 8:     **CONSTRUCTION SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 4  
Article 2, Section 1504  
Article 21, Section 1637, and  
Appendix C, Plate C-17  
**GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 23  
Section 3622  
**Scaffold Plank Design Requirements**  
(Heard at the June 17, 2010, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the package is now ready for the Board's adoption.

MOTION

A motion was made by Mr. Thomas and seconded by Mr. Prescott that the Board adopt the proposal.

A roll call was taken, and all members voted "aye." The motion passed.

3. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 109  
Section 5197  
**Occupational Exposures to Food Flavorings Containing Diacetyl**  
(Heard at the November 19, 2010, Public Hearing)

Mr. Horowitz summarized the history and purpose of the proposal and indicated that the package is now ready for the Board's adoption.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. Kastorff that the Board adopt the proposal.

Mr. Prescott asked whether the subsection (a)(1)(B) reference to diacetyl substitutes would apply only to the particular employer if an employee is found to have work-related obstructive lung disease or whether it would apply severally to a particular chemical. Mr. Horowitz responded that it would apply only to the one employer.

Mr. Washington expressed concerns regarding the following matters:

- the lack of testing and scientific data regarding some of the other included chemicals;
- the requirement that employers have an expertise above the material safety data sheets for diacetyl substitutes;
- the selective nature of the data relied upon, as there may be more recent or current information available;
- the prescriptive nature of the proposal, which does not provide any flexibility for employers to comply and which may be in violation of the Administrative Procedure Act (APA) requirements, in that it is very duplicative of the "high hazard" standards;
- the food manufacturing industry should be excluded from the standard, as there is no evidence of the presence of 1% of diacetyl or a diagnosis of work-related *bronchiolitis obliterans* in the food manufacturing industry.

Mr. Welsh stated that he appreciated Mr. Washington's concerns. This has been a very difficult process for the Division. It is always difficult when a public health agency tries to lead in response to a clear hazard. In this instance, there was a clear hazard, and there was enough evidence to mandate some action.

The Division conducted a full advisory committee process, including the food flavoring and food manufacturing industry representatives, during the development

of the rulemaking package. Part of the reason that there is not a problem in the food manufacturing industry is that they, along with the flavor manufacturing industry, really took the lead in this and worked quickly to get ahead of the curve.

When discussions about a 1% trigger first started approximately three years ago, that was a signal to all of the industries that use this substance that they needed to get below 1%, and that notion of getting below 1% did not come from labor advocates or DOSH, but from discussions at the advisory committee meetings where people started to observe that, in most cases, less than 1% was necessary.

In fact, the very first indications that diacetyl may be a problem was in the food manufacturing industry, not the flavor manufacturing industry. The disease first appeared in the popcorn manufacturing industry, which is not located in California, which is why it is called "popcorn lung." They were using percentages of diacetyl that were much higher than 1%, some as high as 20%.

The point is that because of the advisory committee discussions and because of anticipation of this regulation, the industries the Division is proposing to cover with this regulation have already taken action to control their use of diacetyl. Everybody who could conceivably be covered by this regulation is going to be thinking very seriously about compliance and staying below the 1% trigger level. A big reason that there have not been more cases of *bronchiolitis obliterans* is that this regulation has been anticipated, in part because the companies that participated and helped in the drafting of the regulation are already using one of the paths that this regulation allows.

Mr. Welsh further stated that he understands Mr. Washington's point that there must be critical mass in order to regulate something. The other diketones about which there are provisions in this regulation are substances that probably are not going to be used enough to know for sure, but they have been looked at in the industry, and so far the word is that they do not really produce anything that is usable as a butter flavor, but they are chemically very closely related to diacetyl, closely enough, in fact, to be considered by those who use them as potential substitutes for diacetyl. Because of this close chemical relationship, it was determined to be prudent to include them. Employers should, at the very least, inform their employees that they are working with these products, so that if someone gets sick, the employer can gather some data and figure out what is causing the problem. There is enough potential that it makes sense to at least include a provision recognizing that diacetyl is not the only substance that can cause a real problem.

Mr. Washington stated that another concern is that the regulation identifies by name five different chemicals that are being regulated, and then uses the word "other." He expressed concern that the use of the word "other" is too vague and too broad.

Mr. Welsh responded that the chemicals that can be used as diacetyl substitutes are clearly defined, so when the regulation refers to “other” artificial flavors, the reference is to the listed substances.

Mr. Washington expressed continuing concern that the use of the word “other” is too broad and may leave the employer open to inadvertently violating the standard by using an alternative chemical that is not listed in the standard.

Mr. Prescott stated that he had shared Mr. Washington’s concern regarding the use of the word “other,” but it is defined to be limited only to the specific five chemicals on page 3, definition 21; so it is not going to apply to all other chemicals.

Chair MacLeod stated that Mr. Washington raised a number of points of concern, and he asked Mr. Welsh whether he was confident that the employers would be able to meet the requirements of the regulation. Mr. Welsh responded affirmatively, stating that the Division has done enforcement inspections to support the need for the regulation. In addition, there is a voluntary compliance program in place, the Flavor Industry Safety and Health Evaluation Program (FISHEP), which helped to determine the necessity for the regulation. It became clear that one does not contract *bronchiolitis obliterans* without exposure to diacetyl.

Chair MacLeod stated that, just as a matter of information, Mr. Washington’s comments would be provided to the Office of Administrative Law as part of the rulemaking package. They will thoroughly check the file, as they do all of the Board’s rulemaking files, to determine that it meets the requirements of the APA.

A roll call was taken, and all members voted “aye,” with the exception of Mr. Washington, who voted “no.” The motion passed.

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales asked the Board to adopt the decisions listed on the consent calendar, stating that the unsigned proposed decisions have been signed as the result of a variance hearing held just prior to today’s Board meeting.

MOTION

A motion was made by Mr. Prescott and seconded by Mr. Thomas to adopt the consent calendar as modified.

A roll call was taken, and all members voted “aye.” The motion passed.

C. OTHER

1. Legislative Update

Mr. Beales stated that there is nothing to add to the written legislative update provided in the Board packets.

2. Executive Officer’s Report

Ms. Hart stated that she has nothing to report.

3. Future Agenda Items

None requested.

D. CLOSED SESSSION

The closed session was cancelled.

E. ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 11:00 a.m.